

November 14, 2003

**Hawaii Administrative Rules (HAR), Chapter 11-60.1  
Summary of 2003 Rule Changes**

The main purpose of the 2003 rule changes to the Hawaii Administrative Rules (HAR) is to respond to the Environmental Protection Agency's (EPA's) Notice of Deficiency (Federal Register, Volume 67, No. 62, pages 15385 - 15386, published April 1, 2002) regarding Hawaii's Title V or covered source permit program. A court decision in the case between Western States Petroleum Association and EPA found that EPA had acted inconsistently in its approval of the insignificant activity provisions in several Title V permit programs including Hawaii's. Based on the court decision, EPA cannot allow states to exempt insignificant activities from applicable testing, monitoring, recordkeeping, reporting, and compliance certification provisions of the Title V permit program. In its Notice of Deficiency, EPA directed Hawaii to revise its administrative rules by September 23, 2003 to address insignificant activities.

Other revisions add or clarify activities exempt from the noncovered or deemed insignificant in the covered source permit program; clarify and update state/federal requirements and standards; and make corrections or format changes.

The HAR changes listed below became effective on November 14, 2003.

Note: Changes to various sections have caused some renumbering. These types of changes may not be specifically addressed. Additions or deletions of sections will cause renumbering to occur. Sections denoted below refer to the changed sections, unless the section is being entirely deleted in which case the deleted section will be noted.

Acronyms used are defined in the last page of this document.

Title 11, Chapter 60.1 - Air Pollution Control Subchapter 1, General Requirements		
Subchapter 1, General Requirements		
Section	Description of Changes	Effect of Changes on the Title V or Covered Source Permit Program
§11-60.1-1, Definitions.	<p>Amends the definition of “administrative permit amendment” to implement the requirements in EPA’s Notice of Deficiency. Allows applicable requirements of insignificant activities to be incorporated into a covered source permit through an administrative permit amendment.</p> <p>Amends the definition of “covered source” for consistency within the HAR. The word <i>section</i> in section 111 of the Act is capitalized.</p>	<p>Facilitates requirements of EPA’s Notice of Deficiency. Provides a relatively simple method for incorporating applicable requirements of insignificant activities into covered source permits.</p> <p>None. Format consistency.</p>
§11-60.1-3, General conditions for considering applications.		
§11-60.1-3(4)	Clarifies that <u>40 CFR Part 63</u> is an applicable provision in reviewing permit applications. Part 63 was never specifically listed in this paragraph, although it is an applicable provision for considering permits since the adoption of HAR, Chapter 60.1.	Supports program by adding clarity.
Subchapter 4, Noncovered Sources		
Section	Description of Changes	Effect of Changes on the Title V or Covered Source Permit Program
§11-60.1-61, Definitions.	Amends the introduction to the “Definitions” section to indicate that the definitions listed are relevant to the entire HAR, Subchapter 4, unless the specific definition is superseded because it is defined and used differently within a particular section or subsection of Subchapter 4.	None. Revision made to be consistent with other HAR subchapters in allowing flexibility to define identical terms differently for special cases.

§11-60.1-62, Applicability.		
§11-60.1-62(a)	Clarifies that instead of only subsection (d), both subsections (d) and (g) provide specific exemptions or exceptions to the standard noncovered source permit requirements.	None.
§11-60.1-62(d)(4)	<p>Amends the exemption listing to clarify that only equipment rated less than one million BTU per hour can be exempt, and that equipment should not be combined to form a higher rated unit of one million BTU per hour or greater.</p> <p>Previous rule language could have been misleading, either 1) exempting “physically connected” equipment totaling up to five million BTU per hour; or 2) exempting equipment less than one million BTU per hour up to a combined rated-worth of five million BTU per hour. The intent of the rule was to only exempt smaller emitting units or individually operated equipment less than one million BTU per hour, and not restrict the quantity being exempt unless an applicable requirement is triggered. The five million BTU per hour limit was to serve as a gatekeeper for investigating physically connected units.</p>	None.
§11-60.1-62(d)(21)	Adds an exemption to cover small activities performed strictly for property maintenance and upkeep. Adds “plant maintenance and upkeep activities (e.g., grounds-keeping, general repairs, cleaning, painting, welding, plumbing, re-tarring roofs, installing insulation, and paving parking lots), including equipment used to conduct these activities, provided these activities are not conducted as part of a manufacturing process, are not related to the source’s primary business activity, and are not otherwise subject to an applicable requirement triggering a permit modification.” A similar change is made in §11-60.1-82(g)(9).	None.

§11-60.1-62(g)(1)	Clarifies that the director may conditionally approve the installation <u>and operation</u> of an air pollution control device prior to issuing a noncovered source permit or amendment to a noncovered source permit. The original intent of the rules was to allow both installation and operation of the control device rather than only installation of the control device as the previous rule may have implied.	None.
<b>Subchapter 5, Covered Sources</b>		
<b>Section</b>	<b>Description of Changes</b>	<b>Effect of Changes on the Title V or Covered Source Permit Program</b>
§11-60.1-81, Definitions.	Amends the introduction to the “Definitions” section to indicate that the definitions listed are relevant to the entire HAR, Subchapter 5, unless the specific definition is superceded because it is defined and used differently within a particular section or subsection of Subchapter 5.	None. Revision made to be consistent with other HAR subchapters in allowing flexibility to define identical terms differently for special cases.
§11-60.1-82, Applicability.		
§11-60.1-82(a)	Clarifies that instead of only subsections (d) and (e), subsections (d), (e), and (k) provide specific exemptions or exceptions to the standard covered source permit requirements.	None. The identification of subsection (k) is made for clarity since subsection (k) does provide an exception to standard covered source preconstruction permit requirements. It allows certain air pollution control device installations and test burns to occur prior to obtaining a covered source permit.

<p>§11-60.1-82(e)</p>	<p>Addresses EPA's Notice of Deficiency. Insignificant activities identified in subsections (f) and (g) are no longer exempt from the covered source permit system if subject to applicable requirements. Although insignificant activities are no longer exempt, the Notice of Deficiency does not require preconstruction review of these sources. As a result, the rule change allows owners or operators to begin construction, reconstruction, modification, or operation of an insignificant activity without first obtaining a covered source permit provided certain conditions are met. Applicable requirements for insignificant activities will be incorporated into covered source permits in accordance with new §11-60.1-88.5.</p> <p>Application requirements are also amended in response to EPA's Notice of Deficiency. Insignificant activities listed in subsection (g) need not be identified in the covered source permit application, <u>unless subject to an applicable requirement</u>. This provision will allow DOH to incorporate appropriate requirements into the permit for insignificant activities. The requirement to "identify insignificant activity (g)(1), welding booths, into the covered source permit application if the equipment count exceeds five" is deleted. The language to target activity (g)(1) for identification in an application became unnecessary due to the change above in resolving EPA's Notice of Deficiency.</p> <p>Lastly, the subsection deletes reference to the additional information that may be required by the director for determining fee requirements of insignificant activities. Changes to §11-60.1-114(f)(3) maintains actual fee collection practices of not collecting fees from insignificant activities, by totally exempting insignificant activities from annual fee requirements. As a result, information to determine fees will not be required.</p>	<p>Satisfies and facilitates requirements of EPA's Notice of Deficiency. Removed terminology where insignificant activities are exempt from covered source permitting.</p> <p>Facilitates requirements of EPA's Notice of Deficiency.</p> <p>None. Insignificant activity information to determine annual fees is not needed, since insignificant activities will not be assessed annual fees. The DOH does not rely on fees from insignificant activities to maintain the covered source permit program.</p>
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§11-60.1-82(f)(2)	<p>Clarifies that only equipment rated less than one million BTU per hour can be deemed insignificant, and that equipment should not be combined to form a higher rated unit of one million BTU per hour or greater.</p> <p>Previous rule language could have been misleading, either 1) exempting “physically connected” equipment totaling up to five million BTU per hour; or 2) exempting equipment less than one million BTU per hour up to a combined rated-worth of five million BTU per hour. The intent of the rule was to only exempt smaller emitting units or individually operated equipment less than one million BTU per hour, and not restrict the quantity being exempt unless an applicable requirement is triggered. The five million BTU per hour limit was to serve as a gatekeeper for investigating physically connected units. Regardless, insignificant activities can no longer be exempt from the Title V program (pursuant to EPA’s Notice of Deficiency) and any referral to these activities being “exempted” must be removed.</p>	<p>Negligible. Two scenarios can exist.</p> <p>1) Previously exempted units, that were combined to form a higher rated unit of one million BTU per hour or greater, but less than 5 million BTU per hour, can fall back into regular permitting. The DOH however, is unaware of any case where this scenario occurs.</p> <p>2) Excess insignificant activities that were previously permitted because the facility had more than five million BTU per hour worth of insignificant activities will once again be categorized insignificant. However, because insignificant activities are no longer exempt from the covered source permit program, hardly any change will be seen. These activities will remain covered under permit but possibly in a different manner.</p>
§11-60.1-82(g)(9)	<p>Adds an insignificant activity to cover small activities performed strictly for property maintenance and upkeep. Adds “plant maintenance and upkeep activities (e.g., grounds-keeping, general repairs, cleaning, painting, welding, plumbing, re-tarring roofs, installing insulation, and paving parking lots), including equipment used to conduct these activities, provided these activities are not conducted as part of a manufacturing process, are not related to the source’s primary business activity, and are not otherwise subject to an applicable requirement triggering a permit modification.” A similar change is made in §11-60.1-62(d)(21).</p>	<p>None. This is a similar activity classified as “trivial” in White Paper I.</p>
§11-60.1-82(g)(13)	<p>Adds an insignificant activity to cover incidental office activities. Adds “consumer use of office equipment and products.”</p>	<p>None. This activity is listed in 40 CFR Part 71 as an insignificant emission unit .</p>

§11-60.1-82(k)(1)	Clarifies that the director may conditionally approve the installation <u>and operation</u> of an air pollution control device prior to issuing a covered source permit or amendment to a covered source permit. The original intent of the rules was to allow both installation and operation of the control device rather than only installation of the control device as the previous rule may have implied.	None.
§11-60.1-82(k)(2)(F)	Provides consistency with the language in HAR, §11-60.1-62(g)(2)(F) for noncovered sources. Clarifies that <u>if a performance test or monitoring is required</u> , then the owner or operator of the covered source shall provide written test or monitoring results of an approved test burn.	None.
§11-60.1-86, Compliance certification of covered sources.		
§11-60.1-86(c)	Adds new language to clarify how a facility may determine and certify compliance for insignificant activities. Compliance certification is a requirement of the Title V program and EPA's Notice of Deficiency.	Facilitates requirements of EPA's Notice of Deficiency as to how a facility may certify compliance for insignificant activities.
§11-60.1-88.5, Permit action on insignificant activities.	Implements requirements of EPA's Notice of Deficiency. A new section is added and provides the time-frame when applicable requirements of insignificant activities will or can be incorporated in a covered source permit.	Facilitates requirements of EPA's Notice of Deficiency. Provides the time frame for incorporating insignificant activity requirements into permits.
<b>Subchapter 6, Fees for Covered Sources, Noncovered Sources, and Agricultural Burning</b>		
Section	Description of Changes	Effect of Changes on the Title V or Covered Source Permit Program
§11-60.1-114, Annual fees for covered sources.		

§11-60.1-114(f)(3)	Maintains actual fee collection practices of not collecting fees on insignificant activity emissions. Previously, only insignificant activities regulated under a covered source permit were assessed annual fees. Because most if not all insignificant activities were exempt from the covered source permit program, fees were not collected from these activities. Revisions to §11-60.1-82 would have resulted in insignificant activities being regulated by permit and assessed fees. Exempting all insignificant activities, instead of only the insignificant activities not covered by permit from annual fees would maintain status quo of actual fee collection practices.	None. Exempting insignificant activities from annual fees will maintain actual fee collection practices. The DOH has never relied on fees from insignificant activities to support the covered source permit program.
<b>Subchapter 7, Prevention of Significant Deterioration Review</b>		
Section	Description of Changes	Effect of Changes on the Title V or Covered Source Permit Program
§11-60.1-131, Definitions.	Amends the definition of “major stationary source” to be more consistent in paragraph format with 40 CFR 52.21(b).	None. Format consistency.
<b>Subchapter 8, Standards of Performance for Stationary Sources</b>		
Section	Description of Changes	Effect of Changes on the Title V or Covered Source Permit Program
§11-60.1-163, Federal plans.		
§11-60.1-163(b)(4)	Updates the listing of federal plans under 40 CFR Part 62. Adds Subpart JJJ, Federal Plan Requirements for Small Municipal Waste Combustion Units Constructed On or Before August 30, 1999. No applicable sources identified in Hawaii (based on initial DOH search), however the federal plan is added in the event a source is subsequently found.	Facilitates program.



Subchapter 9, Hazardous Air Pollutant Sources		
Section	Description of Changes	Effect of Changes on the Title V or Covered Source Permit Program
§11-60.1-171, Definitions.	<p>Amends the definition of “commenced” for consistency with 40 CFR 63.1 revisions to replace <i>the term stationary source</i> with <i>affected source</i> .</p> <p>Amends the definition of “equivalent MACT” for consistency with 40 CFR 63.1 revisions, under the term “equivalent emission limitation.”</p> <p>Corrects the definition of “new source.” A new source subject to 112(d), (h), or (j) of the Act may be a major source by itself, or an affected source within a major source. The previous definition identified only a major source of hazardous air pollutants as being a new source.</p> <p>Amends the definition of “reconstruction” to conform with revised 40 CFR 63.1, and to change the term ‘50 percent’ to ‘fifty per cent’ for HAR format consistency.</p>	Facilitates program. Federal/state consistency.
§11-60.1-174, Maximum achievable control technology (MACT) emission standards.		
§11-60.1-174(a)(25)-(28)	Updates the listing of MACT standards under 40 CFR Part 63. Adds Subpart UUU, National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units; Subpart VVV, National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works; Subpart HHHH, National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production; and Subpart VVVV, National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing.	Facilitates program. Updating list of federal standards.

§11-60.1-175, Equivalent maximum achievable control technology (MACT) limitation.		
§11-60.1-175(e)(1)(A)	Replaces the term <i>emission unit</i> with <i>affected source</i> , and deletes the definition of “emission unit” to conform with changes made in 40 CFR 63, Subpart B.	Facilitates program. Federal consistency.
§11-60.1-175(e)(1)(B)	Replaces the term <i>emission unit</i> with <i>affected source</i> to conform with changes made in 40 CFR 63, Subpart B.	Facilitates program. Federal consistency.
§11-60.1-175(e)(2)(A)	Replaces the term <i>emission unit</i> with <i>affected source</i> , and deletes the definition of “emission unit” to conform with changes made in 40 CFR 63, Subpart B.	Facilitates program. Federal consistency.
§11-60.1-175(e)	Deletes reference to 40 CFR 63.55(a) at the end of this subsection. The original 40 CFR 63.55(a) was revised and no longer describes information required in the equivalent MACT permit application.	Facilitates program.

## **Acronyms**

ACT	Clean Air Act	
CFR	Code of Federal Regulations	
DOH	Department of Health	
EPA	Environmental Protection Agency	
HAR	Hawaii Administrative Rules	Chapter 11-59, Ambient Air Quality Standards Chapter 11-60.1, Air Pollution Control
HRS	Hawaii Revised Statutes	Chapter 342B, Air Pollution Control
MACT	Maximum Achievable Control Technology	40 CFR Part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories
Title V	relates to "Part 70" or Hawaii's "Covered Source" permit program	40 CFR Part 70, State Operating Permit Program